IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR.JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

MFA.No. 1465 of 2001(B)

OPHMA.77/1998 of SUB COURT, MAVELIKKARA
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APPELLANT: PETITIONER

SASIDHARAN, S/O. RAGHAVAN,
PALLIYIL VEEDU, PALLICKAL KIZHAKKEKKARA MURI,
THEKKEKKARA VILLAGE.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: CR.PETITIONER
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1. RADHAMONEY, D/O. CHELLAMMA,
THYPARAMBIL VEEDU (SREEJA BHAVAN),
BEACH WARD, ALAPPUZHA.

2. SANTHOSH @ KOCHU, S/O. VASUDEVAN,
KANKALIL THARAYIL,
PALLICKAL KIZHAKKEKKARA MURI,
THEKKEKKARA VILLAGE.

BY ADV. SRI.K.S.HARIHARAPUTHRAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

M.F.A.No.1465 of 2001-B

Dated: November 14, 2007

JUDGMENT

Kurian Joseph, J.

This is an appeal filed against the order in O.P.(HMA) No.177/1998 on the file of the Sub Court, Mavelikkara. The appellant is the husband who is the petitioner before the court below. The petition was filed under section 13 of the Hindu Marriage Act seeking divorce on the ground of adultery. According to the appellant he is entitled to succeed on the ground of adultery. The alleged incident is on 17.7.1997. However, the original petition was filed subsequently. That apart, as rightly held by the court below, there is no evidence to establish the alleged adulterous conduct of the 1st respondent with the 2nd respondent on 17.7.1997. We agree with the reasoning and finding of the court below that the appellant has not succeeded on the ground of adultery. Though an issue was raised regarding the cruelty, the court without going into any details regarding the cruelty, held that the petitioner is not entitled to relief on the ground of cruelty. The learned counsel for the appellant, relying on the decision of the Supreme Court in *Chanderkala Trivedi v. Dr. S.P.Trivedi - (1993) 4 SCC 232* submits that if the marriage is practically dead for all purposes, the court should take a lenient view. This court is not posted with any current instruction as to what is the stage and state as to the relationship between the parties. Therefore, the interests of the appellant can be

safeguarded if this court disposes of the appeal clarifying that it will be open to the appellant to approach the Family Court taking note of the intervening developments and also in view of the specific ground of cruelty as under section 13(1)(ia) of the Hindu Marriage Act, 1955. With such liberty as above, the appeal is disposed of making it further clear that the judgment under appeal or any of the observations and findings in the judgment shall not stand in the way of the Family Court considering the matter in the light of the intervening developments and further grounds on cruelty taken by the petitioner.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

MFA 1465 OF 2001-B

JUDGMENT

14.11.2007